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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0641**

State of Minnesota,
Respondent,

vs.

Lucas Cosme Roman-Vargas,
Appellant.

**Filed March 5, 2018
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-CR16-10117

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Peterson, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

REYES, Judge

Appellant challenges his conviction of first-degree criminal sexual conduct, arguing that the district court erred when it limited direct- and cross-examination of the witnesses

and excluded evidence of the victim's family's immigration status to show a motive to fabricate the allegations. Additionally, appellant makes a number of factual arguments in his pro se supplemental brief. We affirm.

FACTS

Appellant sexually abused his cousin, E. V-A., from when she was approximately four to eight years old while living with E. V-A. and her family. E. V-A. was nine years old and appellant was 34 years old at the time of appellant's jury trial.

When E. V-A. was approximately eight years old, she told appellant to stop sexually abusing her. E. V-A. told her sister about the sexual abuse when she was approximately nine years old. Sister told their mother what had happened, and mother told their father. After that, father kicked appellant out of the house. Father spoke with their priest about the sexual abuse, and their priest notified the Archdiocese, which notified the county, which in turn notified the police. During the police investigation, the Cornerhouse Child Advocacy Center conducted a recorded interview with E. V-A.

On April 14, 2016, the state filed a complaint in the district court charging appellant with two counts of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(a), 1(h)(iii) (2012). Appellant's jury trial took place on December 5-12, 2016. The state's witnesses included E. V-A., sister, mother, and father, among others. Although E. V-A. testified about the sexual abuse, the state did not present physical evidence. The state played the Cornerhouse interview for the jury.

Appellant raised the issue of inquiring into E. V-A.'s family's immigration status for the first time during the motion hearing on the first day of trial. Over the next few days,

appellant raised the immigration issue, arguing it was highly probative of motive to fabricate the allegations. Appellant also claimed that he had a witness, the aunt of both appellant and E. V-A., that would testify that father, who is her brother, told her that mother and sister fabricated the allegation in order to obtain a U-visa.¹

The state objected and sought to exclude evidence of the family's immigration status from the defense's cross-examination of father. The state questioned the relevance of the testimony and argued that it was highly prejudicial for counsel to comment on the family's immigration status or to imply that the family is not in the United States legally.

Outside of the jury's presence, the district court called father to testify about whether he had spoken to aunt about E. V-A.'s allegation against appellant. Father testified that he had not spoken to aunt when appellant was arrested and had not spoken to aunt about appellant, immigration papers, or E. V-A.'s allegations. After that, the district court permitted appellant to ask father, in the jury's presence, whether he told aunt that mother and sister falsified the allegations, but would not allow references to U-visas or immigration status. The district court also allowed appellant to inquire into what E. V-A. may have told father. During father's cross-examination, defense counsel asked father, "have you had any discussion about this incident regarding [defendant] to [aunt?]" Father

¹ A U-visa is an immigration benefit that is available to an alien who both falls victim to a serious crime and provides meaningful assistance to law enforcement. *See* Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U) (2012). The benefits are also available to the victim's family members if the victim is under the age of 16. *Id.* For purposes of immigration law, the term alien means any person who is not a citizen or national of the United States. *Id.* (a)(3); *see also United States ex rel Claussen v. Day*, 279 U.S. 398, 400, 49 S. Ct. 354, 354 (1929).

replied that he had not. Appellant did not ask father whether mother and sister fabricated the allegations or what E. V-A. had told father.

After the close of the state's case-in-chief and outside of the jury's presence, appellant stated that he wanted to ask aunt what father told her about appellant. Despite a lack of foundation, the state, in a showing of good faith, asked the district court to permit appellant to elicit testimony from aunt about the substance of her conversation with father for impeachment. Appellant sought to examine aunt because she claimed that father had told her that he believed mother and sister were fabricating the allegations to gain an immigration benefit. During his direct-examination of aunt, appellant asked her if: (1) father, who is her brother, told her in March or April of 2016 that his wife and daughter were making up E. V-A.'s allegations; (2) he had told her that he did not support what wife and daughter were doing but that he had to go along with it; (3) he had told her that he believed his wife and daughter were making false allegations against an innocent man; and (4) she chose to testify because she wanted the jury to hear the truth. Aunt answered "yes" to each question.

On December 12, 2016, the jury found appellant guilty on both counts of first-degree criminal sexual conduct. The district court sentenced appellant to 160 months imprisonment, followed by a ten-year conditional release term. This appeal follows.

D E C I S I O N

Appellant argues that the district court violated his right to introduce evidence in his defense and his right to confront witnesses. Both alleged constitutional errors are subject to harmless-error review. *State v. Taylor*, 869 N.W.2d 1, 12 (2015) (applying harmless-

error review to Confrontation Clause errors) (citation omitted); *State v. Blom*, 682 N.W.2d 578, 621 (Minn. 2004) (applying harmless-error review to an “erroneous exclusion of evidence that violates the defendant’s right to present evidence”). “A district court’s exclusion of evidence is error if the exclusion is based on an abuse of discretion.” *State v. Larson*, 787 N.W.2d 592, 597 (Minn. 2010). “When an error implicates a constitutional right, we will award a new trial unless the error is harmless beyond a reasonable doubt.” *State v. Davis*, 820 N.W.2d 525, 533 (Minn. 2012) (citation and quotation omitted). Harmless beyond a reasonable doubt means that the reviewing court “must be satisfied beyond a reasonable doubt that an average jury (i.e. a reasonable jury) would have reached the same verdict ‘if the evidence had been admitted and the damaging potential of the evidence fully realized.’” *State v. Greer*, 635 N.W.2d 82, 90 (Minn. 2001) (quoting *State v. Post*, 512 N.W.2d 99, 102 (Minn. 1994)).

I. Any error made by the district court when it limited appellant’s cross-examination of E. V-A.’s family was harmless beyond a reasonable doubt.

Appellant argues that the district court erred in not permitting him to cross-examine E. V-A.’s family members about their immigration status as a motive to fabricate sexual-abuse allegations to obtain an immigration benefit. We are not persuaded.

In criminal cases, the defendant’s right to cross-examine witnesses for motive or bias is secured by the Sixth Amendment. *Davis v. Alaska*, 415 U.S. 308, 315, 317, 94 S. Ct. 1105, 1110 (1974) (“We have recognized that the exposure of a witness’ motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination.”). Nevertheless, trial courts “retain wide latitude insofar as the

Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Delaware v. Van Arsdall*, 475 U.S. 673, 679, 106 S. Ct. 1431, 1435 (1986).

Here, the district court determined that the family's immigration status was only marginally relevant and that evidence of immigration status was more prejudicial than probative. Although appellant argues that the district court erred in these evidentiary determinations, we need not address this issue because any error by the district court was harmless beyond a reasonable doubt. A reasonable jury would have reached the same conclusion even if the evidence had been admitted and its damaging potential realized. *See Greer*, 635 N.W.2d at 90 (citation omitted).

Appellant fails to connect the family's immigration status to E. V-A. herself making a false allegation against appellant. His only connection between the abuse falsifications and the family's alleged receipt of an immigration benefit was through aunt's testimony. Her testimony was predicated on an alleged conversation that she had with father, wherein he told her that he thought mother and sister were fabricating the allegations for an immigration benefit. Appellant was permitted to ask aunt about the alleged fabrication, absent any reference to immigration status, and also asked father if he had had spoken to aunt about E. V-A.'s allegations, to which he replied that he had not. In finding appellant guilty, the jury necessarily determined both that father's testimony was more credible and that aunt's conversation with father did not create a reasonable doubt relevant to its inquiry of appellant's guilt beyond a reasonable doubt. Because appellant's argument rests solely

on what father allegedly told aunt, and we defer to the jury's credibility determinations, appellant's argument that the district court erred does not affect our decision because any error by the district court was harmless beyond a reasonable doubt. We are satisfied that the jury would have reached the same verdict even if the district court had not limited appellant's cross-examination of father.

II. The district court did not abuse its discretion in limiting the scope of appellant's direct-examination of aunt.

The district court permitted appellant to question aunt about father's statement that he thought mother and daughter were fabricating the allegations despite a lack of foundation. Appellant now argues that the district court abused its discretion when it did not permit him to question aunt specifically about the content of her conversation with father regarding the family's immigration status. We disagree.

Due process requires that every defendant be "afforded a meaningful opportunity to present a complete defense." *See State v. Smith*, 876 N.W.2d 310, 331 (Minn. 2016) (citations omitted) (internal quotation marks omitted). But "the evidence proffered in support of the defense must still comply with the rules of evidence." *State v. Nissalke*, 801 N.W.2d 82, 102 (Minn. 2011). And evidence of "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted" is inadmissible hearsay unless otherwise permitted. Minn. R. Evid. 801-802.

Aunt's testimony about the substance of father's statement to her, including mother and sister fabricating the abuse allegations to obtain an immigration benefit, is hearsay

because it was offered for the truth of the matter asserted. *See id.* Because none of the exceptions to the hearsay rule apply, father's hearsay statement to aunt is admissible only as impeachment testimony.

A witness may be impeached if it is established through foundation testimony that he made a prior inconsistent statement that was given under oath. *State v. Barber*, 494 N.W.2d 497, 500 (Minn. App. 1993); *see* Minn. R. Evid. 801(d)(1)(A). Here, aunt's testimony that appellant sought to elicit, including on immigration status and U-visas, was inadmissible hearsay because father made no prior statement about the content of his conversation with aunt. If appellant had questioned father on cross-examination about this, he would have laid the proper foundation for father's impeachment using aunt's testimony about the substance of their conversation. Based on a lack of foundation and father's denial of any such conversation, father had no prior inconsistent statement for aunt to impeach. Therefore, her testimony regarding the content of her conversation with father, including fabricating the abuse allegations to obtain an immigration benefit, was inadmissible hearsay. The district court did not abuse its discretion in limiting the scope of appellant's direct examination of aunt.

III. Appellant's pro se arguments lack merit.

In his pro se supplemental brief, appellant questions the credibility of a number of the state's witnesses. "[A] conviction can rest on the uncorroborated testimony of a single credible witness." *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (quotation omitted); *see also* Minn. Stat. § 609.347, subd. 1 (2016). The determination of whether a witness is reliable is a matter for the factfinder. *See State v. White*, 357 N.W.2d 388, 390

(Minn. App. 1984). Accordingly, we defer to the jury’s credibility determinations, *State v. Watkins*, 650 N.W.2d 738, 741 (Minn. App. 2002), and assume that “the jury believed the state’s witnesses and disbelieved any evidence to the contrary,” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). After carefully reviewing the record, we conclude that appellant’s arguments lack merit.

Affirmed.